



[6705-01-P]

FARM CREDIT ADMINISTRATION

12 CFR Part 622

RIN 3052-AC87

Rules of Practice and Procedure; Adjusting Civil Money

Penalties for Inflation

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: This regulation implements inflation adjustments to civil money penalties (CMPs) that the Farm Credit Administration (FCA) may impose pursuant to the Farm Credit Act of 1971, as amended (Farm Credit Act), and pursuant to the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994 (Reform Act), and further amended by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (Inflation Adjustment Act), requires all Federal agencies with the authority to impose CMPs to evaluate those CMPs periodically to ensure that they continue to maintain their deterrent value and promote compliance with the law.

DATES: This regulation is effective on July 1, 2013.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Objective

The objectives of this regulation are to:

- Adjust for inflation the maximum amount of CMPs that the FCA has jurisdiction to administer pursuant to the Farm Credit Act in accordance with the requirements of the Inflation Adjustment Act¹, and
- Implement the provisions for the maximum amount of CMPs provided by the Biggert-Waters Act.²

II. Background

A. Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended

The Inflation Adjustment Act requires every Federal agency with authority to issue CMPs³ to enact regulations

¹ 28 U.S.C. 2461 note.

² Public Law 112-141, 126 Stat. 405 (July 6, 2012).

³ See 28 U.S.C. 2461 note. Section 3(2) of the amended Inflation Adjustment Act defines a CMP as any penalty, fine, or other sanction that: (1) Either is for a specific monetary amount as provided by

that adjust its CMPs pursuant to the inflation adjustment formula in section 5(b) of the Inflation Adjustment Act. Each Federal agency was required to issue these regulations by October 23, 1996, and, thereafter, to evaluate and adjust the CMPs when necessary, but at least once every 4 years. Section 6 of the amended Inflation Adjustment Act specifies that inflation-adjusted CMPs will apply only to violations that occur after the effective date of the adjustment. The inflation adjustment is based on the percentage increase in the Consumer Price Index (CPI).⁴ Specifically, section 5(b) of the Inflation Adjustment Act defines the term "cost-of-living adjustment" as "the percentage (if any) for each civil monetary penalty by which (1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law." Furthermore, the increase for each CMP adjusted for inflation must be rounded using a method prescribed by section 5(a) of the

Federal law or has a maximum amount provided for by Federal law; and
(2) is assessed or enforced by an agency pursuant to Federal law; and
(3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

⁴ The CPI is published by the Department of Labor, Bureau of Statistics, and is available at its Web site:

<ftp://ftp.bls.gov/pub/special.requests/cpi/cpiiai.txt>.

Inflation Adjustment Act. FCA made its last adjustments to CMPs in January 2009.

B. CMPs Issued Under the Farm Credit Act

The adjustment requirement affects two provisions of section 5.32(a) of the Farm Credit Act. First, it provides that any Farm Credit System (System) institution or any officer, director, employee, agent, or other person participating in the conduct of the affairs of a System institution who violates the terms of a final order issued under section 5.25 or 5.26 of the Farm Credit Act must pay up to \$1,000⁵ per day for each day during which such violation continues. Orders issued by the FCA under section 5.25 or 5.26 of the Farm Credit Act include temporary and permanent cease-and-desist orders. In addition, section 5.32(h) provides that any directive issued under sections 4.3(b)(2), 4.3A(e), or 4.14A(i) of the Farm Credit Act "shall be treated" as a final order issued under section 5.25 for purposes of assessing a CMP. Second, section 5.32(a) also states that "[a]ny such institution or person who violates any provision of the [Farm Credit] Act or any regulation issued under this Act

⁵ The current inflation-adjusted CMP for a violation of a final order is \$1,100 per day, as set forth in § 622.61(a)(1) of FCA regulations.

shall forfeit and pay a civil penalty of not more than \$500⁶ per day for each day during which such violation continues." The maximum amounts of the CMPs, as adjusted pursuant to the Inflation Adjustment Act, are set forth in existing § 622.61 of FCA regulations.

1. Mathematical Calculation

In general, the adjustment calculation required by the Inflation Adjustment Act is based on the percentage by which the CPI for June 2012 exceeds the CPI for June of the calendar year the maximum amount of the CMPs was last adjusted.⁷ The maximum CMPs for violation of the terms of a final order issued under section 5.25 or 5.26 of the Farm Credit Act was last adjusted in 1996.⁸ The maximum CMPs for a violation of the Farm Credit Act, or a regulation issued under the Farm Credit Act, was last adjusted in 2009. According to the Bureau of Labor Statistics, the CPI for June 1996 and June 2009 was 156.7 and 215.693, respectively. The CPI for June 2012 was 229.478, resulting in a percentage change of 46.44 percent from June 1996 and 6.39 percent from June 2009.

⁶ The current inflation-adjusted CMP for a violation of the Farm Credit Act or a regulation issued under the Farm Credit Act is \$750 per day, as set forth in § 622.61(a)(2) of FCA regulations.

⁷ Public Law 101-410, Section 5(b).

⁸ The CMP inflation adjustment analysis was conducted in subsequent intervals following 1996; however, the penalty amount did not change in those calculations. The last year the amount was actually amended was 1996, as such, that is the year for which we refer to the consumer price index.

2. New Penalty Amount in § 622.61(a)(1)

The existing maximum CMPs in § 622.61(a) for a violation of a final order issued under section 5.25 or 5.26 of the Farm Credit Act is \$1,100. Multiplying \$1,100 by the 46.44⁹ percent change in CPI from June 1996 to June 2012 yields an increase of \$510.84. When that number is rounded as required by section 5(a) of the Inflation Adjustment Act,¹⁰ the inflation-adjusted maximum increases to \$2,100.

3. Penalty Amount Remains the Same in § 622.61(a)(2)

The existing maximum CMPs in § 622.61(a)(2) is \$750 for a violation of the Farm Credit Act or regulations issued under the Farm Credit Act that occurs on or after January 16, 2009. Multiplying the existing CMP amount by the 6.39 percent change in CPI from June 2009 to June 2012 yields an increase of \$47.93. This increase is rounded down to \$0.00 as required by section 5(a) of the Inflation

⁹ As a result of the mathematical calculation for the year 2009 and the required rounding application, the penalty amount remained the same and did not reset. Therefore, in accordance with the Inflation Adjustment Act, the calculation for the 2012 adjustment is determined by using the June 1996 CPI of 156.7 and the June 2012 CPI of 229.48, resulting in a percentage change of 46.44 percent.

¹⁰ Per section 5(a)(3) of the Inflation Adjustment Act, any increase determined under the subsection shall be rounded to the nearest multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000.

Adjustment Act¹¹ and, therefore, the inflation-adjusted maximum remains at \$750.

C. CMPs Issued Under the Reform Act

The Flood Disaster Protection Act of 1973,¹² as amended by the National Flood Insurance Reform Act of 1994,¹³ requires that FCA assess CMPs for a pattern or practice of committing certain specific actions in violation of the National Flood Insurance Program. Pursuant to section 100208 of the Biggert Waters Act, which further amends the Flood Disaster Protection Act of 1973, FCA is amending the maximum CMPs prescribed in 42 U.S.C. 4012a(f)(5).¹⁴ In that statute, Congress increased the maximum CMPs per violation of the National Flood Insurance Program from \$385 to \$2,000 and eliminated the cap on the total amount of penalties assessed against a single regulated lender in any calendar year.

1. Mathematical Calculation

As a result of the provisions of the Biggert-Waters Act, the CMPs for violating the National Flood Insurance

¹¹ Per section 5(a)(2), any increase determined under this subsection shall be rounded to the nearest multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000.

¹² 42 U.S.C. 4012a.

¹³ Public Law 103-325, title V, 108 Stat. 2160, 2255-87 (September 23, 1994).

¹⁴ Section 100208 Enforcement: Section 102(f)(5) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)(5)) is amended: (1) In the first sentence, by striking "\$350" and inserting \$2,000; and (2) by striking the second sentence.

Program are not subject to an inflation adjustment at this time.

2. New Penalty Amounts in § 622.61(b)

As required by the Biggert-Waters Act, the maximum assessment of the CMP for violating 42 U.S.C. 4012a(f) (5) is \$2,000 per violation, and the cap on penalties is eliminated.

III. Notice and Comment Not Required by Administrative Procedure Act

The Inflation Adjustment Act gives Federal agencies no discretion in the adjustment of CMPs for the rate of inflation. In addition, the Biggert-Waters Act gives Federal agencies no discretion in the amount of CMPs for violations of the National Flood Insurance Program. Further, these revisions are ministerial, technical, and noncontroversial. For these reasons, the FCA finds good cause to determine that public notice and an opportunity to comment are impracticable, unnecessary, and contrary to the public interest pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b) (B), and adopts this rule in final form.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the FCA hereby

certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 622

Administrative practice and procedure, Crime, Investigations, Penalties.

For the reasons stated in the preamble, part 622 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 622--RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 622 continues to read as follows:

Authority: Secs. 5.9, 5.10, 5.17, 5.25-5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261-2273); 28 U.S.C. 2461 note; and 42 U.S.C. 4012a(f).

2. Revise § 622.61 to read as follows:

§ 622.61 Adjustment of civil money penalties by the rate of inflation under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(a) The maximum amount of each civil money penalty within FCA's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note), as follows:

(1) Amount of civil money penalty imposed under section 5.32 of the Act for violation of a final order issued under section 5.25 or 5.26 of the Act: The maximum daily amount is \$1,100 for violations occurring before July 1, 2013, and \$2,100 for violations that occur on or after July 1, 2013.

(2) Amount of civil money penalty for violation of the Act or regulations: the maximum daily amount is \$650 for each violation that occurs on or after March 16, 2005, but before January 16, 2009, and \$750 for each violation that occurs on or after January 16, 2009.

(b) The maximum civil money penalty amount assessed under 42 U.S.C. 4012a(f) is: \$385 for each violation that occurs on or after March 16, 2005, but before January 16, 2009, with total penalties under such statute not to exceed \$110,000 for any single institution during any calendar year; \$385 for each violation that occurs on or after January 16, 2009, but before July 1, 2013, with total penalties under such statute not to exceed \$120,000 for any single institution during any calendar year; and \$2,000 for

each violation that occurs on or after July 1, 2013, with no cap on the total amount of penalties that can be assessed against any single institution during any calendar year.

Date: April 19, 2013

Dale Aultman,
Secretary,
Farm Credit Administration Board

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